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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16 IN AND FOR THE COUNTY OF YAVAPAI

17 STATE OF ARIZONA,

18 Plaintiff,

19 vs.

20 STEVEN CARROLL DEMOCKER,

21 Defendant.

) No. P1300CR20081339

)

) Div. 6

)

) **MOTION TO COMPEL STATE TO
RESPOND TO DISCOVERY
REQUESTS**

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22 **MOTION**

23 Mr. DeMocker, by and through counsel, hereby respectfully requests that this Court
24 compel the State to respond to outstanding discovery requests. Counsel have made repeated
25 attempts to communicate with the State regarding several items of evidence and has received
26 either no response or woefully inadequate responses. Given that trial is now less than four
27 months away and that their disclosure is required to prepare a defense in this case, we request
28 that the Court intervene and order the State to respond to counsel's requests no later than

1 January 25, 2010. Given the State's repeated failure to comply with disclosure obligations and
2 Rule 15.1 requirements, counsel also request that the Court consider imposing appropriate
3 sanctions pursuant to Rule 15.7.
4

5 **Description of Requested Disclosure**

6 **1. Criminal History of Witnesses.**

7 On August 7, 2009, Mr. Sears emailed Mr. Butner requesting that the State provide the
8 defense with a criminal history for all witnesses the State intends to call at trial, including
9 rebuttal witnesses. On December 14, 2009, Mr. Sears again wrote to Mr. Butner requesting
10 these criminal histories. To date, the State has provided criminal history for only two of the
11 over 200 witnesses on its "revised" witness list. Mr. DeMocker requests that this Court compel
12 the State to provide the criminal history of all witnesses it intends to call at trial, including
13 rebuttal witnesses.
14

15 **2. Cell Phone Data and Expert Access.**

16 On November 2, 2009, Ms. Chapman wrote to Mr. Butner requesting disclosure of the
17 primary target number data on the following phone numbers:
18

- 19 1) 928-713-1919 Steven DeMocker
20 2) 928-830-4705 Jacob Janusek
21 3) 928-713-4187 Virginia Carol Kennedy
22 4) 928-925-1309 Barbara O'Non
23 5) 928-713-8182 Charlotte DeMocker

24 Ms. Chapman requested that the State provide the data in the format it was provided to
25 the State by the carrier. It is apparent from the disclosure that has been made that there is data
26 received by the State regarding cell phone and cell tower information that has not yet been
27 produced to the defense. Ms. Chapman provided an example at bates 2352, where there is a
28 reference to Verizon providing a listing and GPS location of cell towers. The defense has not

1 received this. Ms. Chapman requested disclose of this and all other cell phone and cell tower
2 information not previously disclosed. Ms. Chapman also advised that the defense expert needs
3 to examine the cell phones and requested that Mr. Butner advise how the State would like to
4 handle transfer of the property to the expert.

5 The defense has received no response. Mr. DeMocker requests that this Court order the
6 State to comply with this request. Specifically, we ask the State be ordered to send the
7 requested cell phones to the defense expert for his examination no later than January 25, 2010.
8 We ask that this material be sent by Federal Express to assure its safe and timely delivery.
9

10 **3. 15.1 Compliance Regarding Experts.**

11 On November 17, 2009, Ms. Chapman wrote to Mr. Butner to request that the State
12 identify what papers, documents, photographs or tangible objects it intends rely on to support
13 each alleged aggravating circumstance and to identify all papers, documents, photographs or
14 tangible objects each of its experts have or will rely on and which the State intends to use to
15 support any alleged aggravating circumstance. This disclosure is required under Rule 15.1.
16 Ms. Chapman requested that if the State did not intend to comply with these Rules to please
17 notify the defense immediately so that the defense could seek the assistance of the Court.
18

19 In December, after receiving an order from the Court, the State produced a list of
20 documents describing what Mr. Echols relied upon with no bates labels. (Attached) Ms.
21 Chapman wrote again on December 17th requesting that Mr. Echols identify the bates numbers
22 for the documents he relied on. Ms. Chapman explained that because there are multiple
23 versions of multiple documents from multiple sources, a listing without bates numbers is not
24 sufficient for the defense to know what papers, documents, photographs or tangible objects Mr.
25 Echols will rely on to support any specified alleged aggravating circumstance as required by
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1 Rule 15.1(i), 3(b) and (c). Ms. Chapman made the same request with respect to all of the
2 State's disclosed experts as well as all of the remaining alleged aggravating circumstances.

3 The State responded by advising Ms. Chapman that the defense could try to determine
4 what documents its expert relied on in an interview of Mr. Echols they proposed for Christmas
5 Eve December 24, 2009. Ms. Chapman responded on December 22nd that the State could not
6 abdicate its disclosure obligations and place the burden on the defendant. She further explained
7 that the bates numbers of the documents Mr. Echols relied upon are necessary to prepare to
8 interview him and to prepare our defense. The defense has received no response. Mr.
9 DeMocker requests that this Court order the State to comply with this request with respect to all
10 of the State's witnesses by January 25, 2010. This disclosure is required by Rule 15.1 and is
11 the obligation of the State, not the defense.
12

13
14 **4. Indexing Systems Information.**

15 On December 2, 2009, Ms. Chapman wrote to Mr. Butner requesting that he identify
16 which indexing systems the unidentified biologic and latent print evidence has been searched in
17 as well as the dates of the searches and the results. Ms. Chapman specifically requested this
18 information for evidence items 603, 800, 801, 804, 803, 852, 507 and any other swabs and/or
19 extracts created from these evidence item numbers. Ms. Chapman explained that with respect
20 to biologic evidence, the State provided in disclosure (Bates No. 002955-2956) an indication
21 that on August 1, 2008, a request was made to perform a keyboard search within the SDIS
22 index and no match was found. No other disclosure related to any other index search on any
23 other date for any other biologic evidence has been disclosed. Ms. Chapman requested that Mr.
24 Butner advise in which indices searches have been performed. She also requested the dates of
25 the searches. Lastly she asked what searches regarding the unidentified biologic and latent
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1 print evidence would continue to be performed and asked the State to provide documentation of
2 the searches and the results.

3 The defense has received no response to these requests. Mr. DeMocker requests that
4 the Court order the State to respond to this request no later than January 25, 2010. This
5 evidence regarding the exculpatory DNA found underneath the victim's fingernails is critical to
6 Mr. DeMocker's defense.
7

8 **5. Defendant's Statements.**

9 On December 14, 2009, Mr. Sears wrote to Mr. Butner and requested disclosure of all
10 statements of Mr. DeMocker that are within the State's possession or control that it intends to
11 use in its case-in-chief, pursuant to Rule 15.1(b)(2). The defense has received no response to
12 this request and asks this Court to order a response by January 25, 2010.
13

14 **6. Reports Regarding Witnesses**

15 Also on December 14, 2009, Mr. Sears wrote to Mr. Butner and requested copies of any
16 and all interviews and departmental reports regarding interviews of the State's witnesses, to the
17 extent that they have not already been disclosed. For example, Dr. Fred Markham is identified
18 as a witness, but the defense is unable to find any record that he has been interviewed by law
19 enforcement in connection with this case. In fact, the defense has not received a report from
20 the Yavapai County Sheriff's Office since September 29, 2009, even though the investigation is
21 obviously ongoing. (See Item 9 below). Mr. Sears also requested a detailed list of all papers,
22 documents, photographs or tangible objects the State intends to use at trial.
23

24 The defense has received no response to these requests and asks the Court to order the
25 State to respond no later than January 25, 2010.

26 **7. DPS Disclosure.**
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28

1 On December 17, 2009, Ms. Chapman wrote to Mr. Butner requesting the following
2 items from DPS.

- 3 1. DPS lab protocols for DNA testing and analysis;
- 4 2. DPS lab protocol for sample collection and crime scene response;
- 5 3. Chain of custody documents for DPS reports dated 7/15/08, 2/24/09, 6/1/09 and
6 10/28/09;
- 7 4. Screening notes and photographs for DPS report dated 7/25/08;
- 8 5. Photographs for DPS reports dated 7/31/08, 8/5/08, 9/2/08, 9/3/08, 1/30/09, 2/4/09,
9 2/19/09, 3/23/09, 5/26/09, 6/3/09, and 6/17/09;
- 10 6. DPS Data files for DPS reports dated 9/11/08, 2/24/09 and 6/1/09;
- 11 7. STR Frequency Tables for DPS reports dated 6/1/09 and 6/11/09;
- 12 8. The latest DPS external audit;
- 13 9. DPS Corrective Action log; and
- 14 10. A DPS approved abbreviation list.

15 These items, with the exception of item 10, were all originally requested in an August
16 14, 2009 request. Ms. Chapman also explained that due to the file names and lack of
17 electropherograms, the defense is unable to identify which reports the following files from CD
18 3130 relate to: file 3100m - subfiles 22309, 060109 and 061109. Ms. Chapman requested that
19 the State provide the identifying information for these files immediately.

20 The State has failed to respond to these requests. Mr. DeMocker requests that the Court
21 order a response by January 25, 2010.

22 **8. Sorenson Disclosure.**

23 Also on December 17, 2009, Ms. Chapman wrote to Sorenson Labs, copying Mr.
24 Butner, requesting the following:

25 Laboratory Protocols

26 A copy of all Standard Operating Protocols (SOPs) used in connection with the testing
27 at Sorenson Forensics, including all SOPs for evidence collection, transport and storage as well
28 as for chain of custody.

1 Data Files

2 Copies of all data files created and used in the course of performing the testing and
3 analyzing the data in this case. These files should include all data necessary (1) to
4 independently reanalyze the raw data, and (2) to reconstruct the analysis performed in this case.
5

6 Software

7 A complete list of all commercial software programs used in the DNA testing in this
8 case, including the name of the software program, the manufacturer and the versions used in
9 this case by both labs. The defense explained that we had received a letter from Dan Hellwig
10 to Deb Cowell that identifies only Gene Mapper software. This is not a complete list.

11 These items were originally requested of the State on August 14, 2009. No response to
12 these requests have been received, although personnel records and job descriptions were
13 provided on January 11, 2009. The Court should order a response by January 25, 2010.
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15 **9. Yavapai County Sheriff's Office Supplemental Reports.**

16 Ms. Chapman wrote to Ms. Cowell on January 4, 2009, and explained that the defense
17 is receiving interviews conducted by the YCSO but has not received any reports for these
18 interviews. In fact, the most current reports disclosed to the defense were for investigation
19 conducted by the YCSO in September 2009. The State has responded that there are no later
20 reports. This information seems incredible to the defense. The Court should order that all
21 supplemental reports be completed and provided to the defense by January 25, 2010. Given
22 that the trial is approaching, the Court should further order that all reports be completed and
23 provided to the defense within 15 days and that a list of outstanding reports be provided to the
24 defense immediately.
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1 **CONCLUSION**

2 Defendant Steven DeMocker, by and through counsel, hereby requests that this Court
3 order the State to respond to the above disclosure requests no later than January 25, 2010. The
4 requested disclosure is required for the defense to prepare for a fast approaching trial.
5

6 DATED this 11th day of January, 2010.

7
8 By: 

John M. Sears
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Prescott, Arizona 86302

10 OSBORN MALEDON, P.A.
11 Larry A. Hammond
12 Anne M. Chapman
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Attorneys for Defendant

15 **ORIGINAL** of the foregoing filed
16 this 11th day of January, 2010, with:

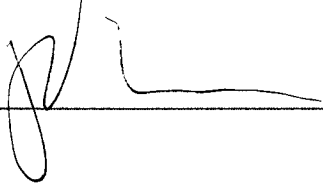
17 Jeanne Hicks
18 Clerk of the Court
19 Yavapai County Superior Court
120 S. Cortez
Prescott, AZ 86303
20

21 **COPIES** of the foregoing hand delivered
22 this 11th day of January, 2010, to:

23 The Hon. Thomas B. Lindberg
24 Judge of the Superior Court
25 Division Six
120 S. Cortez
Prescott, AZ 86303
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Joseph C. Butner, Esq.
Yavapai County Attorney
Prescott courthouse box

A handwritten signature in black ink, appearing to be 'JC Butner', is written over a horizontal line. The signature is stylized with a large loop for the 'J' and a long horizontal stroke for the 'B'.